

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
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Date:
March 20, 2007

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Preferred Stock =

Exchange Debentures =

Preferred Certificate =

Shareholders A =

Shareholder B =

Manager C =

Partner D =

State E =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Day 7 =

Day 8 =

Year 9 =

v =

w =

x =

y =

z =

Period of Time =

Dear :

This letter responds to your authorized representative's letter dated September 11, 2006, requesting rulings under section 1504 of the Internal Revenue Code. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent is the common parent of an affiliated group of corporations that joins in the filing of a consolidated U.S. federal income tax return on a calendar-year basis. Parent's group includes Sub 1 and Sub 2. Parent owns all of the outstanding stock of Sub 1, and Sub 1 owns all of the outstanding voting common stock of Sub 2.

On Date 1, Sub 2 emerged from bankruptcy and, as part of its bankruptcy plan, consummated a recapitalization and refinancing. In connection therewith, Sub 2 issued the Preferred Stock to institutional investors for cash. On Date 5, Sub 2 redeemed all of the Preferred Stock outstanding.

During the period in which it was outstanding, the Preferred Stock ranked senior in right of payment to all classes or series of capital stock of Sub 2 as to dividends and as to proceeds from the liquidation, dissolution, or winding up of Sub 2. The holders of the Preferred Stock were entitled to receive, when and if declared by the Sub 2 Board of Directors, cumulative preferential dividends at the rate per share of v percent per annum, which were payable semi-annually in arrears on Day 7 and Day 8 of each year (a "Dividend Payment Date"). On or before Date 2, Sub 2 could pay dividends on the Preferred Stock in cash or in additional shares of Preferred Stock having a liquidation preference equal to the amount of such dividend. Thereafter, Sub 2 was required to pay dividends on the Preferred Stock in cash only.

Sub 2 was required to redeem, subject to the legal availability of funds, all of the outstanding shares of Preferred Stock on Date 6 at a cash price equal to the liquidation preference of such shares, plus all accrued and unpaid dividends, if any, to the date of

the redemption. Sub 2 had the option on any Dividend Payment Date of exchanging all, but not less than all, of the then outstanding shares of Preferred Stock for Exchange Debentures, subject to certain requirements. However, the Preferred Stock was not convertible into any other class or series of capital stock of Sub 2.

The Preferred Stock had no voting rights, except as required by law and as provided by the Preferred Certificate. The Preferred Certificate granted to the holders of the Preferred Stock limited voting rights in the event that a default occurred, including the failure by Sub 2 to pay w or more consecutive full semi-annual dividends and certain other events (a "Voting Rights Triggering Event"). The Preferred Certificate provided that, upon the occurrence of a Voting Rights Triggering Event, the number of members on the Sub 2 Board of Directors would immediately and automatically be increased by x, and the holders of a majority of the outstanding shares of Preferred Stock, voting as a separate class, would be entitled to elect the x additional board members. These voting rights would continue until all dividends in arrears on the Preferred Stock had been paid in full and all other Voting Rights Triggering Events had been cured or waived.

The Preferred Certificate also provided that any existing default could be waived by the holders of a majority in aggregate liquidation preference of the then outstanding Preferred Stock. Under the terms of the Preferred Certificate, such waiver would prevent voting rights from attaching to the Preferred Stock held by the parties executing such waiver. However, such waiver would have no effect on the voting rights attaching to the Preferred Stock owned by non-consenting holders.

Sub 2 declared and paid all dividends on the Preferred Stock through Date 2 in additional shares of Preferred Stock. Sub 2 paid no dividends on the Preferred Stock after Date 2. Accordingly, a Voting Rights Triggering Event occurred on Date 3.

On Date 3, Shareholders A and Shareholder B (the "Majority Shareholders") collectively owned approximately y percent of the outstanding Preferred Stock. Shareholder B is treated as a partnership for U.S. federal income tax purposes. On Date 3, Partner D owned z percent of the membership interests of Shareholder B and was the managing member of Shareholder B.

Prior to Date 3, Manager C (acting on behalf of Shareholders A) and Partner D (acting on behalf of Shareholder B) waived the voting rights arising from the Date 3 Voting Rights Triggering Event (the "Waiver"). Such waiver was in place at all times from before Date 3 through Date 5, and during this entire period, under its terms, such waiver could be terminated only upon Period of Time notice provided by the holders of a majority of aggregate liquidation preference of the Preferred Stock.

No written notice to terminate the Waiver was ever submitted to Sub 2, and no holder of the Preferred Stock ever exercised (or attempted to exercise) its voting rights

to elect members to the Sub 2 Board of Directors or any right to increase the number of members to the Sub 2 Board of Directors.

With the exception of the purchase of additional shares of Preferred Stock by Shareholders A in Year 9, there was no issuance, sale, transfer, or disposal of shares of Preferred Stock by any holder after the execution of the Waiver by Manager C (acting on behalf of Shareholders A) and Partner D (acting on behalf of Shareholder B).

REPRESENTATIONS

The taxpayer makes the following representations:

- (a) Each of Parent, Sub 1, and Sub 2 is an includible corporation within the meaning of section 1504(b).
- (b) The Preferred Stock is stock that is limited and preferred as to dividends and does not participate in corporate growth to any significant extent within the meaning of § 1504(a)(4)(B).
- (c) The Waiver was duly extended by Manager C (acting on behalf of Shareholders A) and Partner D (acting on behalf of Shareholder B) to officers and directors of Sub 2 prior to Date 3. Such waiver was in place at all times thereafter through Date 5, and during this entire period, under its terms, such waiver could be terminated only upon Period of Time notice provided by the holders of a majority of aggregate liquidation preference of the Preferred Stock.
- (d) Under State E law, the Waiver was valid and effective upon conveyance prior to Date 3, and as a result of the Waiver, no holder of the Preferred Stock could elect directors to the Sub 2 Board of Directors unless and until the Waiver was terminated.
- (e) On Date 3, the value of the shares of the Preferred Stock held by shareholders that did not provide a waiver was less than 20 percent of the sum of the value of the Sub 2 common stock outstanding on that date and the value of such shares of Preferred Stock.
- (f) The fair market value of the outstanding Preferred Stock, at all times within the last five years, constituted more than 50 percent of the total fair market value of all classes of Sub 2 stock outstanding.

RULINGS

Based solely on the information and representations submitted, we rule as follows:

- (1) The Voting Rights Triggering Event that occurred on Date 3 did not cause the Preferred Stock to be treated as (a) stock entitled to vote within the meaning of section 1504(a)(4)(A) or (b) stock that is convertible into another class of stock within the meaning of section 1504(a)(4)(D).
- (2) The ability of Manager C (acting on behalf of Shareholders A) and Partner D (acting on behalf of Shareholder B) to execute the Waiver and/or to terminate the Waiver did not cause application of the rules of section 1.1504-4 of the Income Tax Regulations (regarding the treatment of warrants, options, convertible obligations, and other similar interests).

CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, the validity of the rulings contained in this letter is expressly conditioned on the fact that a valid and legally enforceable Waiver was in place prior to Date 3 and thereafter through Date 5 and the fact that such Waiver could be revoked only with prior written notice and the passage of Period of Time. Verification of these facts should be required as part of the audit process.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Associate Chief Counsel (Corporate)

cc: